IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.440 OF 2007

Ganpati Maruti Lahigade & Ors. ...Petitioners.
Vs.
Ganpati Appa Jankar & Ors. ...Respondents.

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Mr. Anilkumar Patil for the Petitioners.
None for the Respondents.

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CORAM :DR.D.Y.CHANDRACHUD, J.
July 4, 2007.

P.C.:

The Second Defendant expired during the pendency of the suit for possession on 23rd December 2000 and a purshis was filed on 23rd February 2001. From the application at Exh.107 it emerges that the Plaintiff had, in fact, taken out an application earlier for condoning the delay in applying for setting aside the abatement on the ground that the Plaintiff had not been able to obtain details of the names of the legal heirs. Notices were issued thereon which were returned unserved. Thereafter, a fresh application at Exh.108 was taken out. In the meantime, an order was passed by the Trial Court on 26th

August 2003 that the suit against the Second Defendant stood abated. By the application at Exh.107, the Original Plaintiff submitted that the abatement be set aside and the legal heirs of the Second Defendant be brought on the record. That application was allowed by the impugned order dated 13th September 2006. The delay on the part of the Original Plaintiff was sufficiently explained in the application at Exh.107. Hence, there is no infirmity in the order of the Learned Trial Judge so as to warrant interference under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

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